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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/782,520	02/14/2001	Geraldine Lerebour	2365-28	7537

23117 7590 11/02/2005

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EXAMINER

KIM, JENNIFER M

ART UNIT PAPER NUMBER

1617

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/782,520	LEREBOUR ET AL.	
	Examiner	Art Unit	
	Jennifer Kim	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-37 is/are pending in the application.
- 4a) Of the above claim(s) 16 and 28-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-15, 17-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 1, 2004 has been entered.

Applicant's election with traverse of Group I claims drawn to a method of reducing the adhesion of microorganisms to the surface of the skin and/or the mucous membranes without requiring the presence of antibiotic, bactericidal or fungicidal agents, classified in class 424, subclass 401 with election of species of olive oil as a fatty substance free of carbohydrate units is acknowledged. The traversal is on the ground(s) that the applicants have received and responded to two substantive Actions such that the new restriction requirement is believed to be inappropriate. This is not persuasive because the restriction requirement can be made at any time when the distinctness and independence of the invention is clear (MPEP 811). In this case it is clear that multiple inventions are unrelated by reasons stated in the last restriction requirement. Therefore, the restriction requirement made is deemed proper and made final.

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The claims 13-15 and 17-27 have been examined extent to the Applicant's elected species. Claims 16 and 28-37 are withdrawn from consideration since they are non-elected invention.

Applicant's arguments with respect to claims 13-15 and 17-27 have been considered but are moot in view of the new ground(s) of rejection in view of species election.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 13-15 and 17-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright (U.S. Patent No. 5,547,677) of record.

Wright teaches an antimicrobial lipid-containing oil-in-water emulsion comprising **olive oil**. (abstract, column 3, lines 53-59). Wright teaches the emulsion is safe and non-toxic and can be applied to the skin. (column 1, lines 55-58). Wright teaches the emulsion can be **applied topically to skin surface and mucus membranes**. Wright teaches an oil-in-water emulsions have discrete droplets of oil, called the "discontinuous phase," dispersed in a "continuous phase" of water or an aqueous solvent and the discontinuous phase of Wright's emulsion binds to the **biological membrane of a pathogen and subsequently solubilizes the membrane**. Wright teaches the emulsion has microbial activity against a broad spectrum of bacteria and several yeasts. (column 1, lines 10-16). Wright teaches the emulsion can also be used for dermatological application as a cream or gel to inactivate or prevent infection secondary to ***propionibacterium acnes*** and prevent infection by gram positive bacteria. (column

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4, lines 45-58). Wright teaches the amounts of oil (olive oil) to be employed in the emulsion is **67%** by weight. (column 4, lines 20-21).

Wright does not expressly illustrate the specific example of emulsion comprising olive oil and a disruption of the ecological balance among resident flora and the chemical characteristic of olive oil having a melting point of less than 35 C and having an interfacial tension of between 6 and 27 mN/m.

It would have been obvious to one of ordinary skill in the art to employ olive oil in the emulsion taught by Wright because Wright teach that olive oil is one of the useful oil in formulation antimicrobial oil-in water emulsion effective for inactive or prevent infection secondary to ***propionibacterium acnes***. Applicant's limitation of reducing the adhesion of microorganisms to the surface of the skin and/or the mucous membrane is obvious the emulsion taught by Wright bind to the biological membrane of a pathogens including ***propionibacterium acnes*** and subsequently **solubilized** the membrane. Applicant's limitation of reducing a disruption of ecological balance among resident flora is obvious because the emulsion is effective as an antimicrobial including ***propionibacterium acnes***. Further, the chemical/physical characteristics of olive oil having an melting point of less than 35 C and having the specified interfacial tension can be found with the same olive oil compound and within the same amounts employed taught by Wright because the compound (olive oil) and is physical/chemical characteristic as insperatable. One of ordinary skill in the art would have been motivated to employ olive oil comprising emulsion in order to sucessfully fight and

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reduce any bacterial contact (adhesion) by solubilizing the bacterial membrane as taught by Wright.

For these reasons the claimed subject matter is deemed to fail to patentably distinguish over the state of the art as represented by the cited references. The claims are therefore properly rejected under 35 U.S.C. 103.

None of the claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer Kim whose telephone number is 571-272-0628. The examiner can normally be reached on Monday through Friday 6:30 am to 3 pm.

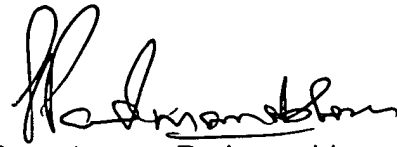
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read 'S. Padmanabhan', with a horizontal line drawn underneath the name.

Sreenivasan Padmanabhan
Supervisory Examiner
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Jmk
October 24, 2005